HB
III

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group**, 4247 Locust Street, #806 Philadelphia, PA 19104 Plaintiff, v. **Learn The Skills Corp.**, et al. Defendants.	: : : : : : : : : : :	**CASE NO.: 05-cv-2752** **Hon. Harvey Bartle, III**

ORDER

AND NOW, this ___ day of _____________, 2006, in consideration of Defendant Trustees of the University of Pennsylvania's Motion To Dismiss, and all responses thereto, the motion is **denied.** A memorandum opinion is attached.

____
J.

HB III

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group**, 4247 Locust Street, #806 Philadelphia, PA 19104 FILED SEP 1 2 2005 MICHAEL E. KUNZ, Clerk By ____ Dep. Clerk Plaintiff, v. **Learn The Skills Corp.**, et al. Defendants.	: : : : : : : : : : :	**CASE NO.: 05-cv-2752** **Hon. Harvey Bartle, III**

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA'S MOTION TO DISMISS

Plaintiff Gordon Roy Parker, in the above-styled action, submits this response to Defendant's Motion To Dismiss and Memorandum in support thereto. The motion referred to the Memorandum, so only the Memorandum need be addressed here:

I. INTRODUCTION

Defendant Trustees of the University of Pennsylvania ("Penn" or "Defendant") have moved to dismiss this case on the grounds of failure to state a claim pursuant to Federal Rule 12(b)(6) and failure to state with specificity pursuant to Rule 9(b), as well as failure to state a claim for fraud which they also claim is time-barred. Defendant finally claims that claims based on the allegation of perjury at the February 12, 2003 hearing are estopped because they have already been litigated.[1]

II. DEFENDANT'S ALLEGED "UNDISPUTED FACTS"

Plaintiff contests the following alleged "undisputed facts":

[1] Defendant's brief, p.1.

1. Defendant claims, that the allegations surrounding the charge of perjury were "already litigated."[2] They were most definitely not, as the motion to compel the production of documents was **denied as moot** by Judge Kelly.[3] The motion was moot because the time limit for service had expired, and no extension was being granted. Penn's testimony had absolutely nothing to do with the dismissal, and because the case was dismissed, Wintermute's identity was no longer germane. The "merits" of the subpoena were never explored, nor did they have to be. It should also be noted that, at the time of the hearing, Plaintiff had not found the evidence he would later discover that shows that Penn maintains a very detailed history of IP assignments through its "IP Change History Database," and it does not permit anonymous assignments due to "billing and network issues." That new evidence alone would destroy any estoppel.

2. Defendant then claims that "noticeably absent [from the Complaint], however, are any specific factual allegations that any employee, representative or agent from Penn communicated with 'Wintermute' or 'Osgaldor Storm.' Indeed, plaintiff attaches no e-mails or other written communications to the Complaint, and provides no dates, times, or events to substantiate any of his claims against Penn." This is not the case, as paragraphs 32 of the Complaint shows that Detective Blackmore (who worked for Penn) had communicated directly with Wintermute:

> ***Detective Blackmore initially told Plaintiff that he had spoken to Wintermute*** and warned him to cease and desist, and that Wintermute had agreed to do this. On September 15, 2001, Wintermute posted to ASF, a message confirming that he was "instructed not to speak to [Plaintiff]. (Complaint, ¶32, p. 11).

3. The basis for the charge of conspiracy with Wintermute was his September 15, 2001 posting to the alt.seduction.fast ("ASF") USENET newsgroup, where he posted that he

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[2] Id.

[3] A copy of the order dismissing Parker v. Wintermute is attached as Exhibit A and incorporated by reference as if fully stated verbatim herein.

"had been instructed not to speak to" Plaintiff. This was consistent with what Plaintiff alleged in ¶ 32 of the Complaint. The actual posting was not included as an exhibit, as including all of the exhibits from the flood of postings that will comprise the evidence in this case would have made the Complaint hundreds of pages. Following is the full text of that post, with the Message-ID and NNTP posting-host indicating it was from the Penn system:

> From: Wintermute <wintermute@spamsux.lycos.com>
> Newsgroups: alt.seduction.fast
> Subject: Re: Everyone speaks for Winterpuke except himself....
> Date: Sat, 15 Sep 2001 22:13:51 -0300
> Organization: University of Pennsylvania
> Lines: 22
> Message-ID: <MPG.160dd4ed51b8f3e89897a5@netnews.upenn.edu>
> References: <20010915213416.28880.00000315@mb-mm.aol.com>
> **NNTP-Posting-Host: wlt-102-199.greeknet-student.upenn.edu**
> X-Newsreader: MicroPlanet Gravity v2.50
>
> I was instructed not to speak to you yes. It is a good use of my time.
>
> In article ,
> betforaliving@aol.com says...
> > Notice that, folks?
> >
> > Bet he's not laughing about now..........
> >
> >
> > Ray Gordon, Author
> > The Nice-Guy Graveyard: Where men go to bury their kindness and be the jerk
> > women love
> > http://www.cybersheet.com/library.html
> >
>
> --
> Wintermute *** RAFC
> wintermute AT lycos DOT com
>
> New to this newsgroup? Start here:
> http://www.fastseduction.com/asf-faq.shtml

4. Regarding Osgaldor Storm (whose identity as the author of the message was confirmed via discovery of Alltel), Plaintiff alleged specific facts supporting a conspiracy in paragraph 91 of his Complaint. The paragraph states:

> In April 2003, a man later identified through discovery as Osgaldor Storm (a Seduction Mafia operative from the NLP community) began threatening Plaintiff's life repeatedly. In a message dated April 15, 2003, Dr. Storm stated that he had

previously worked for Penn and that Penn in fact had "put him up" to making the threats. (Complaint, ¶ 91, p. 43).

5. Since Defendant insists, Plaintiff will now include the entire post, with headers, which supports his claim for conspiracy (the quote "I used to work for UPenn and it was them who put me up to joining this newsgroup" is highlighted in ***bold italics*** below:

Subject: Re: Ray gets ASF death threat; investigators to get names of "group" that incites
Path: lobby!ngtf-m01.news.aol.com!ngpeer.news.aol.com!cyclone1.gnilink.net!wn14feed!wn13feed!worldnet.att.net!216.166.71.14!border3.nntp.aus1.giganews.com!nntp.giganews.com!NetNews1!attsl2!ip.att.net!news.alltel.net!53ab2750!not-for-mail
From: "Don" donjuan@nlp-nhs.org
Newsgroups: alt.seduction.fast
References: <20030415055615.01379.00000746@mb-fa.aol.com>
Lines: 304
X-Priority: 3
X-MSMail-Priority: Normal
X-Newsreader: Microsoft Outlook Express 6.00.2600.0000
X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2600.0000
Message-ID: <elVma.8634$Dd4.3007999@news.alltel.net>
Date: Tue, 15 Apr 2003 15:14:18 GMT
NNTP-Posting-Host: 162.39.198.182
X-Complaints-To: abuse@alltel.net
X-Trace: news.alltel.net 1050419658 162.39.198.182 (Tue, 15 Apr 2003 10:14:18 CDT)
NNTP-Posting-Date: Tue, 15 Apr 2003 10:14:18 CDT

ROTFLMAO!!!!!

God you get me SO FUCKING HOT, Gordon!

Knock yourself out! File and list every single poster to this group because that seems to be the scope of the people who believe you are genuinely mentally ill! And have another beer while you're at it because the judge is going to have some very interesting things to say to you right before he orders you remanded for psych evaluation! When it happens, I will GLADLY fly over from the UK to present MY EVIDENCE that you are A DISGUSTING FRAUD, A CHILD MOLESTING ALCHOLIC who has threatened me repeatedly, and who poses a continuing and ongoing threat to himself and others! When WAS your last suicide attempt, Ray? And you never told me if it was Tegretol or Stelazine.

Oh no, wait a moment. Gordon, I have to confess something to you. In all fairness, you should know that I have previously been ruled "Non compos mentis" and I really can't testify to anything. I'm just too mentally unstable, and with my history of violent outbursts, I'm afraid I'm not welcome in many courtrooms. Can you *really* be sure that I'm NOT hiding in your closet when you go to bed tonight? But what do I know? I'm just some loser who's read a couple a' books. ***I used to work for U Penn and it was actually them who put me up to joining this newsgroup.*** But then, I think it's possible that certain people may have already paid DOZENS of people to go after you, meticulously, methodically, and WITHOUT MERCY. Isn't it true that you are aware that your house is under surveillance? But you aren't yet aware that there are people following you? Have you noticed your computer is not acting quite "right" recently? Do you know how easily an anonymous person from overseas can get into your computer while you're online? And you'd never even have known about it until it's way too late, isn't that what they say. Virus and history kill software don't prevent people of spoofing IP's and easily slipping into your system without even the slightest hint of your detection. Look above you Ray. What do you see that could easily have a concealed camera in it? Have you noticed how easy it is to find people here who wish you ill, people who are close enough that it would be a simple matter to "visit" your home? Your mom is a nice lady, and she's very forthcoming with polite young ladies who ask seemingly innocuous "survey questions". Did you know there may be people RIGHT HERE ON THIS LIST who may know people WHO HAVE BEEN *INSIDE* YOUR HOUSE? It's true! There may very well be such people. Of course, I'm just writing about a general topic, not writing about anyone specific, I wouldn't want to seem disingenuous, that would be AN INEXCUSABLE FAILURE on my part to *be a responsible member of this online community*.

Btw, Gordon, you never answered ANY of my questions. Why is that? Could it be that I already know the answers, and you KNOW that I know?

I'm a little surprised that you haven't gotten my phone number yet, Gordon. How can you insult me if you don't do your homework?

Or are you afraid of what you will find at the other end of that telephone? You really needn't fear the inevitable, Gordon. You really needn't. ;-D

And thank you for being so entertaining during your remaining days, you SEXY BEAST you!

Now run along and file your lawsuits and leave these nice people alone. :-D

24 days, Gordon. Can you feel it? ;-)

Don

6. Osgaldor Storm was previously alleged to have furthered the RICO enterprise by linking to the "RayFAQ" website. According to his own posting, Penn "put him up to" joining the newsgroup and threatening Plaintiff's life repeatedly. Penn never sued Dr. Storm for defamation despite being offered his contact information by Plaintiff in April 2004. Plaintiff further alleged that this was a violation of the Sarbanes-Oxley Act (18 USC §1513 (e)) because it was an attempt to interfere with Plaintiff's employment (by conveying to the public that Penn would rather kill him than hire him in addition to defaming him) in retaliation for his having reported the federal crimes alleged against Wintermute.

Penn's characterization of these "undisputed facts" is questionable at best. Its characterization of the perjury issue having been "previously litigated is even more dubious."

III. LEGAL STANDARD

Penn "rounds up the usual citations" and describes the standard for granting a motion to dismiss (light most favorable to the Plaintiff, etc.), and concludes by saying that: "Here, the Complaint contain no facts, details or assertions whatsoever that resemble viable claims against Penn. Accordingly, plaintiff s claims must be dismissed."

Plaintiff digresses: he has alleged a "mafia" which uses organized-crime tactics (i.e., RICO violations) in order to secure market share in the seduction arena of the internet market for how-to websites, books, and other products and services. He alleged that Wintermute acted in furtherance of that mafia by threatening Plaintiff in violation of the Hobbs Act, and that Defendant committed the predicate act of obstruction of justice in violation of 18 USC §1511, which is also a predicate RICO act, as well as interfering with Plaintiff's employment in violation of the Sarbanes Oxley Act (18 USC §1513(e). Additionally, Plaintiff has just filed suit in federal court alleging discrimination based on this ongoing obstruction of justice with this Court (case number pending. That case will be Parker v. Trustees of the University of Pennsylvania). Plaintiff alleged a conspiracy to threaten him among Penn and Osgaldor Storm, and would be entitled to relief under the most favorable light standard. The motion to dismiss should therefore be denied.

IV. ARGUMENT

A. Plaintiff's state-law claims are not time-barred due to 1) their continuing nature, including identical or similar timely acts; 2) equitable tolling due to wrong forum and discovery of injury; 3) indigence; 4) good cause; and 5) any alleged defects are curable with amendment.

1. **The fraud is ongoing and includes acts which fall within the statute of limitations.**

Defendant's own stating of the first element of fraud explain why the conduct must be considered ongoing: "1) a false representation of an existing fact or nonprivileged failure to disclose." Penn had a duty to Plaintiff to inform them that they could have located Wintermute. That duty is ongoing. Penn could have turned over Wintermute's identity (or documents sufficient to identify him), or they could have informed Plaintiff that they were in possession of this information, but have not to the present. Thus there has been a repeated "failure to disclose."

The above argument would be sufficient, but it is not even necessary, as Penn repeated its fraud on April 22, 2004, when it made the same claims in its response to a subpoena duces tecum in Parker v. Learn The Skills Corp. (E.D.Pa. #03-cv-6936). That motion was not ruled upon, and became moot when the Complaint against Wintermute was dismissed **without prejudice** on August 11, 2004. Penn took this opportunity to badger Plaintiff yet again by saying things such as:

> Penn has a strong interest in keeping the names and addresses of its graduates out of the hands of persons such as Mr. Parker.....***Penn has repeatedly informed Mr. Parker that no information is available from which the identity of the senders of the emails in question could be determined.*** This is true even if Penn were ordered to supply the requested information. At the February 12,2003 hearing on the first subpoena, Penn employees provided under oath the evidence establishing Penn's inability to identify the senders of the emails. Penn has documented that it does not have the information Mr. Parker seeks. Still, Mr. Parker persists in requesting, again and again, the same information from Penn - even in unrelated discovery proceedings. Rule 45 was designed to protect subpoena recipients, especially third-party subpoena recipients, from this is the sort of harassing discovery.
>
> The Court should not enforce the subpoena but rather should quash it because the requests for names and addresses of Penn students is improper and overbroad, and

> the remaining request for information about the identity of senders of emails has already been answered repeatedly and is harassing.[4]

Penn's claims above regarding the hearing of February 12, 2003 again fail to acknowledge that the motion to enforce that subpoena was denied as moot, not because Penn had conclusively established that it did not have Wintermute's identity. While ignoring the record, Penn gratuitously uses its invalid premise to lambaste Plaintiff and draw unfounded legal conclusions about whether or not Wintermute could have been identified from the documents sought by Plaintiff, while questioning Plaintiff's motives for seeking the information. Under the most-favorable light doctrine, it has to be presumed for purposes of this motion that Plaintiff is correct in that the testimony and related statements were false and that the conduct was fraudulent.

While Plaintiff did not single out the conduct of April 22, 2004 in his Complaint, it is nonetheless true that he did specify in paragraph 145(c) of the Complaint that Penn was "***continuing to defraud Plaintiff*** by claiming it could not locate Wintermute."[5] The conduct being continued was specified and was not at issue until Penn argued that the fraud claim was time-barred, when it clearly was not. The most liberal construction of the pleading of the Complaint would have the fraud continuing to the present; this Response to Penn's Motion should make clear to the court that Penn's statute-of-limitations arguments should fail.

Plaintiff did not intend to avoid including evidence with his Complaint, but rather wanted to ensure that it was concise, a daunting task in a RICO action involving dozens of predicate acts alone, against six defendants. As it was, the Complaint ran 74 pages, and as the exhibits to this motion show, to include all documentation with a "notice pleading" complaint would have been impractical. To the extent exact dates of the continuation were not sufficiently specified, that can easily be corrected by amendment to the Complaint, the leave for which should be granted should this Court deem it necessary.

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[4] Response to Motion to Enforce Subpoena, ¶ VII, "Conclusion, p. 8. The full response, without exhibits (most are repetitions of the case background) except for the Millar/Blackmore affidavits and Penn's responses to Plaintiff and the court, are attached hereto as Exhibit B and incorporated by reference as if fully stated verbatim herein.

[5] Complaint, ¶145, p. 55.

2.. **Equitable Tolling.** The equitable tolling doctrine is well established:

> The equitable tolling doctrine provides that it "may be appropriate [to toll the limitations period:] (1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum." (Flint v. Philadelphia, E.D.Pa. #98-cv-95, 1998).

In this case, Plaintiff had raised the issue of fraud based on this conduct in Parker v. University of Pennsylvania (E.D.Pa. #02-cv-567), where he cited it as the basis for a retaliation charge in his Motion For Partial Summary Judgment (June 4, 2003). That case was dismissed on summary judgment and appeal, and Plaintiff has until later this month to petition for certiorari to the United States Supreme Court (SCOTUS). That appeal was first denied in late April, and this case was filed a few short weeks later. In the event it is overturned, Plaintiff would still have standing to bring it along with his discrimination claims, but that is not possible at this time. This forum was therefore correct, and the doctrine of equitable tolling clearly applies.

Additionally, since the statute of limitations accrues from the discovery of injury, the issue of timing is more a matter of days or weeks than it is months. It was not until June 4, 2003 that Plaintiff had filed his Motion For Summary Judgment, and only for a short time had he been in possession of the "smoking gun" evidence of perjury.

3. **Indigence.** Plaintiff's finances are limited and volatile. He had a recent family medical emergency which drained his funds because expensive medicine that was needed immediately had to be bought. He has had to meet another filing deadline and $250.00 filing fee today because the EEOC unexpectedly issues a right-to-sue letter six weeks after a complaint

was filed. Had he had the money to file earlier, he would have. In the event that his prevails on either of those discrimination claims, he will have been indigent as a direct consequence of discrimination by Defendant (which must be presumed under the most-favorable-light standard for this motion). Additionally, had the fraud not occurred, Plaintiff would have been able to terminate the conduct cited in this action, which further drained his resources. To not toll the statute of limitations would therefore reward Penn for its unclean hands.

4. **Good Cause.** The circumstances set forth in paragraphs 1-3 above, collectively constitute good cause. Further, good cause is not necessary due to the actions of April 22, 2004 cited above and the fact that Plaintiff had pled a "continuing" violation of the tort.

5. **Curable Defects.** As the facts set forth in the Complaint and here demonstrate, any alleged defects in the pleading related to the issues cited here can be cured by amendment to the Complaint (including but not limited to the addition of averments relating to the conduct of April 22, 2004), and dismissal is therefore not appropriate.

B. The Complaint Complies With Federal Rule 9(b)

Defendant argues that Plaintiff has not complied with Federal Rule 9(b), which requires that fraud must be pled with specificity. (Defendant's Brief, ¶ 4(B), p.6). It claims in its motion that Plaintiff's "allegation of fraud as to Penn is a one-sentence paragraph (¶ 237) in a Complaint seventy-four (74) pages in length. It the cites the specific allegation, but Penn also ignores other parts of the Complaint where Plaintiff set forth more specificity.

Plaintiff has specified the fraudulent claim: that Detective Blackmore had spoken with Wintermute and knew who he was. The fraud occurred when Detective Blackmore (and Penn's attorneys, on Penn's behalf) repeatedly claimed, in correspondence, pleadings, and testimony), that it could not identify Wintermute. The exact wording follows:

145. Defendant Trustees of the University of Pennsylvania committed separate predicate acts of obstruction of justice as follows:

a. By refusing to identify Wintermute in its reply to Plaintiff's Motion To Enforce A Subpoena Duces Tecum on or about December 18, 2002.

b. ***By fraudulently testifying in court*** on February 12, 2003 that it had no knowledge of Wintermute's identity, despite a prior admission by Detective Blackmore that it did.

c. By ***continuing to defraud Plaintiff*** by claiming it could not locate Wintermute.[6]

Plaintiff was sufficiently explicit in identifying the circumstances surrounding the fraud. Alternatively, Plaintiff argues that any alleged defects can be fixed by Amendment.

Defendant's claim in its motion that it was not put on notice of the times or "precise misconduct with which they are charged"[7] also fail or can be cured by amendment.

Defendant's Motion To Dismiss the fraud and conspiracy claims should therefore be denied. To the extent that the negligence claims are not addressed by the arguments against the fraud claim due to the lower standard of proof, the negligence claim should survive regardless since no specific argument in support of dismissing it was made.

C. Plaintiff Has Alleged Predicate RICO Acts And Does Not Even Need To Under 18 USCA §1962(a).

Defendant relies on the doctrine of estoppel to argue that the averments relating to Wintermute have been "previously decided by other courts to the dissatisfaction of Plaintiff."

1. **The Issue Was Not Previously Litigated.** As Plaintiff has shown, and as the attached order dismissing Parker v. Wintermute shows, the issue of perjury has ***never*** been decided on the merits. The motion to enforce the subpoena for Wintermute's identity was **denied as moot**, and nothing in the record supports Defendant's claim that the merits of Penn's testimony were litigated.

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[6] Id

[7] Defendant's Brief, ¶ IV(B), p.7

2. **New Evidence Destroys Estoppel.** The evidence that uncovered the fraud was not discovered until at least May 2003, several months after the Wintermute case had been dismissed. The existence of new evidence alone destroys any estoppel, but that is not necessary here since there was no legitimate claim to estoppel in the first place.

3. **The Issue of Perjury Is Irrelevant To The Sarbanes-Oxley Claims**. The Sarbanes-Oxley Act, 18 USC §1513(e), states that:

> Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, ***including interference with the lawful employment or livelihood of any person,*** for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

Offenses under this act are predicate RICO acts, and require only a retaliatory intent which is irrelevant to the disposition of the Wintermute subpoena. The allegations against Osgaldor Storm included an allegation of a violation of Sarbanes-Oxley, as Penn had allegedly "put up" Dr. Storm to threatening Plaintiff. Considering that Defendant had threatened to sue Plaintiff under the Dragonetti Act for a perceived violation of its rights,[8] that it would not sue Dr. Storm for defamation (i.e., accusing Penn of effectively "putting out a hit" on Plaintiff) is incredulous. This act of omission left the public with the impression that Penn, either formally or with "wink and nod" approval, sanctioned Dr. Storm's conduct.

Obstruction of justice (18 USC §1511) is a predicate RICO act for a good reason: its consequences are far-reaching, and it is a common mafia tactic. "Wintermute" had been recruited by a group of online "thugs," a "seduction mafia," to defame and harass Plaintiff, in part precisely because he was located at Penn, so as to give the impression that Plaintiff could not even prosecute someone "in his own back yard."

[8] Complaint, ¶ 93, p. 44.

Had Penn simply identified Wintermute (as Detective Blackmore had said that he had, confirmed by Wintermute's posting that he had been "instructed not to speak to Plaintiff"), they could have remained neutral in this action, and Plaintiff would have been able to conduct discovery of and take testimony from Wintermute that could have stopped the Seduction Mafia in its tracks. Instead, Penn chose to obstruct justice by concealing his identity, and only because of Plaintiff's research in his discrimination lawsuit, and Wintermute's choosing to reveal loads of personal information about himself, was Plaintiff later able to locate his identity without Penn's IP records. Rather than doing what any neutral law enforcement officer would have done and secure his name, Penn then claimed that Plaintiff was seeking improper discovery, when all he has been trying to do is properly subpoena information which would lead to the discovery of the identity of a Penn student who had threatened him online and who was repeatedly defaming him.

4. **Predicate Acts Pled.** Plaintiff has pled multiple predicate acts against Penn in his Complaint. They include:

1. Multiple Violations of 18 USC §1511 for obstruction of justice, with each misrepresentation regarding Wintermute constituting a wholly separate predicate act.[9]

2. Violations of Sarbanes-Oxley, 18 USC §1513(e), for interfering with Plaintiff's employment in retaliation for his having committed a federal crime. The conduct includes the new allegations raised in Parker v. Trustees of the University of Pennsylvania, which is being filed on this date and has no case number). It also incorporates the allegations against Osgaldor Storm, as he claimed to have been "put up to" his conduct by Penn.

5. **Pleading Predicate Acts Not Necessary Under 18 USC §1962(d)**

[9] Complaint, ¶ 145, p. 45.

Even if this Court were to find that no predicate acts by Google were committed, this would not preclude liability under §1962(d). Google's assertion that it must commit predicate acts to be liable, fail under the light of Beck v. Prupis, No. 98-1480, 2000, where the United States Supreme Court held:

> "Under our interpretation, a plaintiff could, through a §1964(c) suit for a violation of §1962(d), ***sue co-conspirators who might not themselves have violated one of the substantive provisions of §1962."*** (Emphasis Added).

Beck is unambiguous: predicate acts are simply not required to establish RICO liability for aiding and abetting under 18 USC §1962(d). Penn, having been put on notice of exactly how the RICO enterprise was harming Plaintiff, chose instead to assist that enterprise. Plaintiff has pled a blatant conspiracy (the "Seduction Mafia") with a clearly defined economic purpose (to gain customers for "seduction gurus" within the Mafia), and who engaged in violations of the Hobbs Act (extortion), with peripheral violations of other acts (18 USC §1030(a)(7), relating to threatening a protected computer, 18 USC §1511 and §1513, relating to obstruction of justice and interference with employment in retaliation for reporting a federal crime, and the "primary" violations of the Hobbs Act).

D. Plaintiff's Civil Conspiracy Claims Do Not Fail

To the extent that Penn has argued that the civil conspiracy claim fails because the fraud claim fails, Plaintiff has argued in paragraph C) above why that argument should fail.

To the extent that Penn argues that Plaintiff has not pled a claim for civil conspiracy, he has already set forth how he argued that Wintermute and Penn conspired to commit fraud against him repeatedly during the times in controversy, as part of a "continuing" violation, such as with the timely acts of April 22, 2004, when Penn again obstructed Plaintiff's ability to identify Wintermute.

Penn attempts to characterize the civil conspiracy count as a "civil claim for perjury," and provides typical citations which indicate that one cannot sue for civil conspiracy in Pennsylvania unless the underlying acts are actionable in a civil suit. Since Plaintiff is alleging conspiracy based on fraud, which is actionable, this argument is irrelevant.

To support its claim, Defendant cites Homer v. Chiamacco, 2 Pa. D. & C.3d 7 55, 7 5 (1977). Aside from pointing out that Homer is not even binding on this court, the key citation shows what separates this case from Homer:

> "The true import of plaintiff s instant action lies...in the attempted reevaluation of testimony which has already been found sufficiently credible to extinguish all reasonable doubt."

Given that the merits of the testimony in controversy were never adjudicated, but rather that the underlying motion was denied as moot, there is no way to claim that "all reasonable doubt" has in any way been "extinguished" here. The fraud alleged here extends beyond perjury, as the misrepresentations were made repeatedly to Plaintiff long before he subpoenaed the information. To the extent that this does bar a civil action for fraud, a criminal complaint would be Plaintiff's only option, one he has eschewed because of a desire on the part of law enforcement not to become "discovery units" for civil litigants.

Perjury, by itself, would not give rise to an action for fraud, as one must also prove economic harm. There are also cases where something which is not actionable in and of itself (such as assault without a conviction) might be actionable in a civil case (such as a personal-injury claim based on the assault from a guest of the owner of the premises on which it occurred). Plaintiff seeks an action not for the perjury itself, but for the greater scheme of fraud of which it was a part. The type of protection the Homer court was attempting to extend to witnesses would be naturally destroyed by fraud anyway, as the doctrine of unclean-hands prohibits a party from profiting from fraud.

The remainder of this argument by Penn indicates that Plaintiff has not alleged agreement between Wintermute and Penn to commit fraud, yet the facts make clear that this is exactly what he is alleging: Wintermute sought "protection" from Penn by having his identity concealed, got it, was reassured that Plaintiff could not locate him, continued to taunt Plaintiff over this, and indeed, could not be located or served as a direct and proximate result of the conduct. Plaintiff suffered massive damages as a result of this fraud, in the form of a dismissed RICO lawsuit due to lack of service caused by the very fraud alleged here.

E. Plaintiff Has Stated A Claim For Fraud.

Defendant's arguments will be addressed sequentially:

1. No Estoppel. Defendant again claims that Plaintiff is estopped from raising a claim for fraud based on Detective Blackmore's testimony, and claims that "Plaintiff relies solely on the testimony of Detective Blackmore at the February 12,2003 judicial hearing as proof positive of a fraud."[10] This is incorrect, as Plaintiff was merely pleading a complaint, not preparing for trial. He did allege a "continuing fraud",[11] and under the most-favorable-light standard, this allegation must be presumed true for this motion. The estoppel argument is refuted by the record: the motion to compel the Wintermute subpoena was denied as moot, and both cases were dismissed **without prejudice** on procedural grounds. The issue was never adjudicated on the merits, and no court has held that Penn's testimony was true.

Any alleged defects relating to the pleading can easily be cured via an amended complaint. Defendant's Motion should therefore be denied.

2. **"Relitigation" of Blackmore's Testimony Is Proper.** Plaintiff has argued that the underlying issue in the alleged fraud has never been "litigated" so it doesn't need to be

[10] Defendant's Brief, ¶ IV(E), p. 12
[11] Complaint, ¶ 145, p. 45

"relitigated," but further argues here that the issue is properly raised due to the new evidence uncovered in May 2003, three months after the February 12, 2003 hearing.

Defendant also claims that:

> "Second, as noted above, plaintiff has not alleged any additional facts, with any degree of specificity, to move this Court to "re-litigate" his claim that Detective Blackmore (who is not a named defendant) gave conflicting information at the hearing."[12]

The Complaint shows that this is not correct.

> While researching Parker v. University of Pennsylvania, Plaintiff uncovered compelling evidence that the Wintermute messages were in fact easily traceable, known to Penn all along, and that the IP addresses from which Wintermute posted did not change over periods of several months.[13]
>
> ***Since that hearing, several key pieces of information about Wintermute have come to light,*** including: a) he graduated in 2004, with a major in engineering and a minor in mathematics; b) he posted his height, age, weight, and other information about himself; c) he posted his own picture and that of his girlfriend to a "seduction conquest" section of a "pickup" website (www.auseduction.com) which is similar in nature to and affiliated with the LTSC website; d) his hometown address (which Penn has) is located in the state of Massachusetts; and e) Since graduating, he has moved to Austin, Texas and works a full-time job.[14] (Emphasis Added).

The timeline of stated events shows that evidence supporting these factual averments (such as Wintermute's post-graduation employment in 2004) were not available to Plaintiff at the time of the hearing on February 12, 2003. As was not the case in February 2003, Plaintiff now has alternative means of identifying Wintermute, and this makes it possible to perpetuate testimony from Wintermute which would prove these averments.

3. **Plaintiff Has Specifically Alleged That Detective Blackmore Had Wintermute's Identity:**

> Third, plaintiff has not provided any specific facts that Detective Blackmore knew the identity of Wintermute. Interestingly, plaintiff relies on a statement by the "mafia operative" Wintermute (who plaintiff previously sued) that was allegedly posted on a web-site, which plaintiff conveniently failed to attach to his Complaint

---

[12] Defendant's Brief, ¶ IV(E), p. 12
[13] Complaint, ¶ 85, p. 42.
[14] Complaint, ¶¶ 87(a-e), pp. 42-43.

> and now asserts was defamatory to his character and has caused him great pain and anguish. See Exhibit "A," ¶ 83.[15]

A simple reading of the Complaint refutes this argument:

> ***Detective Blackmore initially told Plaintiff that he had spoken to Wintermute*** and warned him to cease and desist, and that Wintermute had agreed to do this. On September 15, 2001, Wintermute posted to ASF, a message confirming that he was "instructed not to speak to [Plaintiff].[16] (Emphasis Added).

> ***Detective Blackmore told Plaintiff on or about September 13, 2001 that he had instructed Wintermute to cease and desist***, Wintermute posted a message to ASF on September 15, 2001 confirming that he had been "instructed not to speak to Plaintiff."[17] (Emphasis Added).

It should be self-evident that in order to speak to Wintermute, as Detective Blackmore had claimed to Plaintiff, he had to have identified him first.

4. **"Defamatory Hearsay."** Defendant concludes with an argument based on communications made by Wintermute and/or other operatives to Penn in response to his reporting the threats by Wintermute:

> Lastly, plaintiff states that "[Detective Blackmore] backed off once he realized that all he had was *defamatory hearsay*." (emphasis added) [Complaint] at ¶82. Yet, plaintiff now hurls similar disparaging allegations against Penn and Detective Blackmore that, given the sparse allegations of the Complaint, originated from a web-site that can be characterized as none other than hearsay. Given the above, the undisputed facts clearly establish that plaintiff has not sufficiently pled a claim of fraud as against Penn.[18]

Defendant appears not to know the difference between USENET and a website. USENET message boards are not part of the world wide web ("WWW"), but instead are decentralized message-boards which are carried by "news servers" who trade messages for each "newsgroup" they carry. All messages for a newsgroup wind up on all servers which carry that group. Penn runs its own USENET server, and allows its students to post to USENET. The only way to identify the author of a message from a Penn student is through the discovery methods Plaintiff used, but which still failed due to the fraud.

---

[15] Id.
[16] Complaint, ¶ 32, p. 11.
[17] Complaint, ¶ 83, p. 42
[18] Defendant's Brief, ¶ IV(E), p. 12

Penn simply miscalculated when it committed this fraud because it did not envision Plaintiff uncovering the contradictory evidence relating to the IP Change History Database,[19] and it certainly did not envision Wintermute "pressing his luck" by posting personal information sufficient to identify him, including his picture and that of a girlfriend who is a student at Penn and who Penn is trying to keep in the dark about an invasion of her privacy. Penn was simply caught with its "pants down" and is trying to cover its tracks through repeated deflection and an indignation which is anything but righteous. It accused Plaintiff of using discovery to harass, yet it used obstruction of said discovery to enable a rather serious affront to one of its female students (the woman whose picture was posted by Wintermute, presumably without his consent).

Plaintiff has provided ample additional information in this Brief to refute any claims that he is merely engaging in ***defamatory hearsay*** regarding Detective Blackmore's statements. He has hard evidence of perjury, including evidence that a) Wintermute used a static IP address which did not change for months at a time; b) Penn does not assign "anonymous" connections to its internet users; c) Penn keeps a detailed history of past and present IP assignments in a database for "security and billing" purposes; d) Wintermute himself posted a message claiming he had been "spoken to" by Penn, which corresponded with a representation by Detective Blackmore to Plaintiff two days prior to that posting where Plaintiff was told the same thing; and e) the existence of documents in Penn's control which would allow Plaintiff to identify Wintermute and take his direct testimony concerning this matter.

---

[19] Exhibit B, the April 22, 2004 response to subpoena, which includes several references to the IP change history database.

The "defamatory hearsay" to which Defendant refers was that of third-party internet users that Detective Blackmore was all too willing to believe, as he responded to Plaintiff's report against Wintermute by initially "interrogating" Plaintiff, with an eye towards making a case against Plaintiff, and had to be reminded by Plaintiff that what he was reading was a third-party accusation and not a message posted by Plaintiff. This is a far cry from what Plaintiff has done here.

V. CONCLUSION

In its Motion and Brief, Penn has repeatedly mischaracterized everything from the nature of Plaintiff's claims, the time period they cover (by ignoring the "continuing" fraud allegation now supported by timely incident evidence), and most importantly, the nature of the "adjudication" of the subpoenas and motions to compel the release of Wintermute's identity or information which would lead to its discovery. Penn has portrayed Plaintiff's case as unfounded and groundless, while taking what seem to be obligatory "swipes" at his character and motives.

It is no small wonder, given the nature of the allegations, that Penn would want once again to "short-circuit" this case before discovery, because if Plaintiff's allegations are true, which under the most-favorable-light standard they must be treated as by this Court, then it would be revealed that one of their own law enforcement officers committed perjury, a felony.

Plaintiff has attempted, as best he can, to "stick to the facts," and simply show once again what he has sued Penn for, and why: they willfully and intentionally aided and abetted an internet-based, organized-crime ("RICO") operation designed to corner the seduction-advice market, and did so by obstructing justice, violating the retaliation provision of the Sarbanes-Oxley Act (18 USC §1513(e)), and committing and conspiring with Wintermute to commit fraud against Plaintiff. Under Beck, any nonpredicate acts (such as abuse of process, which does not require termination in Plaintiff's favor of the underlying process), are also actionable under 18 USC §1962(d).

For these reasons, and for the reasons set forth herein, Defendant's Motion To Dismiss should be **denied**. An appropriate form of order is attached.

This the 12th day of September, 2005.

Gordon Roy Parker
Plaintiff, Pro Se
4247 Locust Street, #806
Philadelphia, PA 19104
(215) 386-7366
GordonRoyParker@aol.com

FILED

SEP 1 2 2005

MICHAEL E. KUNZ, Clerk
By ______ Dep. Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group,** 4247 Locust Street, #806 Philadelphia, PA 19104	:	
Plaintiff,	:	**CASE NO.: 05-cv-2752**
v.	:	
Learn The Skills Corp., et al.	:	**Hon. Harvey Bartle, III**
Defendants.	:	

CERTIFICATE OF SERVICE

I, Gordon Roy Parker, hereby certify that I have served the foregoing **Brief In Opposition To Defendant University of Pennsylvania's Motion To Dismiss** on the following Defendants, by the following means:

Trustees of the Univ. of PA
Dennis G. Young (Counsel)
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street, 28th Fl.
Philadelphia PA 19109
Hand Delivery

Paul Ross
310 Tahiti Way
Marina Del Ray, CA 90292-678
Regular Mail

Matthew S. Wolf, Esq.
1236-K Brace Road
Cherry Hill, NJ 08034
Regular Mail

Thom E. Geiger
817 North McCrary Road
Columbus, MS 39702-4320
Regular Mail

Learn The Skills Corp.
955 Massachusetts Ave, #350
Cambridge, MA 02139
Regular Mail

Formhandle@fastseduction.com
Learn The Skills Corp.
955 Massachusetts Ave, #350
Cambridge, MA 02139
Regular Mail

This the 12th day of September, 2005.

Gordon Roy Parker, Plaintiff, Pro Se
4247 Locust Street, #806
Philadelphia, PA 19104
(215) 386-7366
GordonRoyParker@aol.com

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a/k/a RAY GORDON, Plaintiff,	:	CIVIL ACTION
v.	:	
JOHN DOE #1, a/k/a "WINTERMUTE," and JOHN DOES #2-100, Defendants.	:	No. 02-CV-7215

ORDER

AND NOW, this 25th day of February 2003, upon consideration of Plaintiff Gordon Roy Parker's, a/k/a Ray Gordon ("Plaintiff") continued and inexcusable failure to serve any defendants, including those defendants identified by Plaintiff, in the above-mentioned case, despite this Court's several admonitions to do so and extensions of time to effectuate service, we conclude that Plaintiff has failed to comply with this Court's January 22, 2003 letter ordering him to file proof of service of process by February 12, 2003. Since Plaintiff does not present an adequate reason for his inability to serve these defendants within the additional time this Court extended him, it is **ORDERED** that pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff's case is **DISMISSED WITHOUT PREJUDICE.**

It is further **ORDERED** that all outstanding motions, including Plaintiff's Second Motion for Leave to File a Second Amended Complaint and For Extension of Time to Effect Service

(Doc. No. 18) and Motion to Enforce Subpoenas Duces Tecum on Nonparty University of Pennsylvania (Doc. No. 8), must be **DENIED AS MOOT.**

BY THE COURT:

____

JAMES McGIRR KELLY, J.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, Plaintiff	:	CASE NO.: 03-cv-6936
v.	:	
LEARN THE SKILLS CORP., et al Defendant.	:	

PENN'S OPPOSITION TO PLAINTIFF'S AMENDED MOTION TO ENFORCE SUBPOENA DUCES TECUM AGAINST NONPARTY UNIVERSITY OF PENNSYLVANIA

University of Pennsylvania ("Penn") hereby responds to Plaintiff's Amended Motion To Enforce Subpoena Duces Tecum Against Nonparty University Of Pennsylvania:

1.-2. No responsive pleading required.

3. Denied.

5. Denied. The letter, which plaintiff attached as Exhibit B to his Motion, speaks for itself.

6. No responsive pleading necessary.

7. No responsive pleading necessary.

8.-9. Denied.

Penn objects to plaintiff's statement in his "Certification Pursuant to Local Rule 26.1(f)" that "Penn did not intend to comply with any requests in the subpoena." Penn complied with the subpoena by providing all relevant and discoverable information.

Penn objects to plaintiff's statement that Penn "did not address requests 1-4) and 6) of the subpoena." The letter speaks for itself. No item 6 existed in Plaintiff's subpoena, as Exhibit A to plaintiff's Motion clearly indicates.[1]

The University has provided all relevant and discoverable information. Parker's request for information that he knows is not available is repetitive and harassing, and his request for the names and addresses of countless Penn graduates is overbroad and improper. Penn relies on the attached memorandum of law, which is incorporated herein by reference.

WHEREFORE, Penn respectfully moves that the Court deny the motion and enter the proposed order.

Respectfully submitted,

Date: April 22, 2004

John M. Myers (Pa. Id. No. 16642)
Jonathan H. Pyle (Pa. Id. No. 89887)
Montgomery, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
(215) 772-1500

Attorneys for Nonparty
University of Pennsylvania

[1] Plaintiff's cover page paraphrases his subpoena and indicates a sixth item, which is described on the cover page as "6) 2002-03 Penn Student Directory." This request did not appear on the subpoena itself.

CERTIFICATE OF SERVICE

I, Jonathan H. Pyle, do hereby certify that on the 22nd day of April, 2004, I caused a true and correct copy of the foregoing Penn's Opposition To Plaintiff's Amended Motion To Enforce Subpoena Duces Tecum Against Nonparty University Of Pennsylvania to be served via U.S. First Class Mail, postage prepaid, upon the following individual at the address indicated:

Gordon Roy Parker
4247 Locust Street, #806
Philadelphia, PA 19104

Pro Se Plaintiff

Jane Doe
4846 N. University Drive
Suite 101
Landerhill, FL 33351

Pro Se Movant

Matthew S. Wolf
Wolf & Booth, LLC
9 Tanner Street
Suite 13
Haddonfield, NJ 08033

Counsel for Learn The Skills Corp.

Jonathan H. Pyle

Jonathan H. Pyle

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER,	:	
Plaintiff	:	CASE NO.: 03-cv-6936
v.	:	
LEARN THE SKILLS CORP., et al	:	
Defendant.	:	

PENN'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S AMENDED MOTION TO ENFORCE SUBPOENA DUCES TECUM AGAINST NONPARTY UNIVERSITY OF PENNSYLVANIA

University of Pennsylvania ("Penn"), submits this memorandum in support of its opposition to plaintiff's amended motion to enforce his subpoena duces tecum against it.

I. INTRODUCTION

This is the *third* attempt by the plaintiff, Mr. Parker, to open up the student records of the University of Pennsylvania to his perusal.

Mr. Parker served an almost identical subpoena on Penn in the predecessor case to this one. Penn's opposition to Parker's motion to enforce that subpoena is attached as Exhibit A. Mr. Parker next tried to obtain student records through discovery in an unrelated matter, *Parker v. University of Pennsylvania*, No. 02-cv-567 (E.D. Pa.) (Brody, J.). After Penn objected to the discovery there, Mr. Parker filed the present complaint.

Here, in his third attempt, Mr. Parker seeks various lists of students and addresses, in circumstances which seem to have no proper motive or likely effect other than harassment of newly graduated students not likely to be in a position to defend themselves well. While Mr.

Parker may think Penn has the information to permit him to identify the senders of certain emails, Penn does not have such information. Mr. Parker was so informed in Penn's written response to his discovery demands (attached as Exhibit B):

> The University has no documents or computer records from which the identity of the users of the IP addresses attached to the subpoena could be determined.
>
> The Assignments database and the IP Change Database described in the amended complaint dated February 27, 2004 provide no information about the identity of the users of the IP addresses. The Assignments database is a front-end system to manage Penn's domain name server. It contains no information about the user of an IP address. The IP Change Database records the date and time of each change to the Assignments database and the user ID of the computing staff member who made the change to the database.

As the testimony at the hearing before this Court on Mr. Parker's first subpoena demonstrated, the documents and electronic data available will not permit identification of the senders of the emails about which he complains. Neither will the information now sought.

Accordingly, since prying into the private lives of Penn students will get Mr. Parker no farther in his quest, the Penn student database should not be opened for his perusal. The motion to enforce the subpoena should be denied, the subpoena quashed, and an order issued.

II. THE FACTS

On September 18, 2002, Mr. Parker filed a John Doe lawsuit, No. 02-CV-7215, against an individual who Mr. Parker alleged to have threatened him over the Internet on September 11, 2001, following Mr. Parker's bizarre comments on the terrorist attacks that day. He sought discovery from Penn, a non-party, including:

> 1. The name and home and school addresses of the individual known on the internet as "Wintermute" against whom I filed a police report with Detective James B. Blackmore of the Penn Department of Public Safety over the content of the messages attached hereto as exhibits A-2 and A-3. His

identity can be discovered by Detective Blackmore of the Department of Public Safety (4040 Chestnut Street, Philadelphia, PA 19104 or 215-898-4481), or by Dave Millar (or the current Information Security Officer), at 215-898-2172.

2. The location of the computers from which all of the attached messages A-1 thru A-9 were posted. The message-ID information should be sufficient to obtain the identity of this user from Dave Millar of the ISC Department.

3. A statement from Mark Wehrle of the ISC Department regarding which user account posted the message attached hereto as Exhibit B, and which computer the message came from.

November 21, 2002 letter from Mr. Parker to Office of General Counsel, University of Pennsylvania (attached as Exhibit C).

Penn responded that "[t]he University has no available information from which the identity of the senders of the emails attached to the subpoena could be determined." At the subsequent hearing on February 12, 2003, David Millar, Information Security Officer at the University of Pennsylvania, testified that the University did not have documents or computer records from which identity of the sender of the emails in question could be determined. Penn's Detective James D. Blackmore testified that he received a complaint from Mr. Parker on September 11, 2001 regarding the emails, but was unable to determine the sender of the e-mails in question.

On February 25, 2003, the Court dismissed Mr. Parker's case without prejudice for failure to serve any defendants "despite this Court's several admonitions to do so and extensions of time to effectuate service." Feb. 25, 2003 Order at 1 (attached hereto as Exhibit D).

On November 24, 2003, Mr. Parker served discovery on Penn in the case of *Gordon Roy Parker v. University of Pennsylvania*, No. 02-cv-567 (E.D. Pa.) (Brody, J.), an unrelated case in which Mr. Parker claims that Penn has discriminated against him because he is a man. In that case, Mr. Parker requested that Penn:

1. Produce each and every document relating to any police report filed with the Penn Department of Public Safety by Plaintiff during September 2001, including but not limited to the report filed on or about September 12-13, 2001 over internet threats Plaintiff had received by a Penn student known to Plaintiff only as "Wintermute."

2. Produce document(s) sufficient to identify the records from the Penn "IP Assignments" database that reveal the location of the computer and the accountholder associated with each IP address listed below, for each date and time listed (these are the IP addresses and times for the defamatory and threatening messages posted by "Wintermute" and which were previously attached as exhibits in other pleadings and which should already be in Penn's possession).

DNS/IP Address		Date		IP Address
wlt-102-199.greeknet-student.upenn.edu		09/11/2001		199.102.123.165
wlt-102-199.greeknet-student.upenn.edu		09/26/2001		199.102.123.165
wlt-102-199.greeknet-student.upenn.edu		02/19/2002		165.123.102.224
dhcp0006.wlt.greeknet.group.upenn.edu		08/06/2002		165.123.197.36
dhcp0006.wlt.greeknet.group.upenn.edu		08/13/2002		165.123.197.36
dhcp0006.wlt.greeknet.group.upenn.edu		11/14/2002		165.123.197.36
wlt-102-199.greeknet-student.upenn.edu		09/15/2001		199.102.123.165
School of Engineering and Applied Science		10/24/2001		158.130.22.103
dhcp0006.wlt.greeknet.group.upenn.edu		04/22/2003		165.123.197.36

3. Produce any police reports or other summaries in Penn's possession, including but not limited to those from the Department of Public Safety and Penn's ISC, of any incidents in the years 2001-2003 which involve anyone with a PennNET account who has been accused of illegal behavior over the internet, including but not limited to making threats, sending mass, unsolicited e-mail ("spam"), or infringing copyrights.

4. Produce and date, in CD-ROM format, the current contents of the entire UPenn website (http://www.upenn.edu) as it currently exists.

5. Produce a true and accurate copy of the UPenn student directories from 1999-2000, 2000-01, 2001-02, and 2002-03.

6. Produce document(s) sufficient to identify the names of every Penn student who, at any time since 1999, were students at Penn who listed Mechanical Engineering as their Major and Mathematics as their Minor.

7. Produce document(s) sufficient to identify the names of every student who has received a degree in Mechanical Engineering at Penn during the calendar years of 2002-2003.

> 8. Produce document(s) sufficient to identify the names of every Penn student who, as of May 2002, whose home address was listed in UPenn records as Massachusetts.
>
> 9. Produce document(s) sufficient to identify the names of every Penn fraternity with a house located on the Penn campus or in an off-campus location (i.e., which is part of "GreekNET"), and list all members of each fraternity, for the period from the Fall Semester of 1999 through the Spring Semester of 2003.

Plaintiff's Fourth Request For Production Of Documents, *Parker v. Univ. of Pa.*, No. 02-cv-567, at 2-4 (E.D. Pa. Nov. 27, 2003) (attached hereto as Exhibit E). He has not yet moved to compel a response in that case.

Soon after Penn objected to these requests, Mr. Parker filed the instant complaint, which is virtually identical to his original John Doe complaint, except that it names certain people by their Internet alias and names Learn The Skills Corp., a publisher of instructional materials for men on how to "seduce" women. Learn The Skills Corporation seems to be a competitor of Mr. Parker's Snodgrass Publishing Group, also apparently publishing materials relating to sex and the "seduction" of women.

Then, on March 17, 2004, Mr. Parker served the present subpoena (attached hereto as Exhibit F) on Penn seeking:

> 1. A list of the names of all active members of all fraternities on the UPenn campus for the academic year of 2002-2003.
>
> 2. The names of all students who graduated from Penn in 2003 with a degree in Mechanical Engineering, or who completed equivalent coursework.
>
> 3. A list of the names of all seniors from the 2002-2003 academic year whose home state according to UPenn records was Massachusetts.
>
> 4. The address of any person who fits two or more of the criteria in 1-3 above.
>
> 5. The identity of the PennNET user(s) who were assigned the IP Change History Database as listed on the attached Exhibit A.

Penn responded to the subpoena and informed Mr. Parker, as it had informed him at the hearing on the first subpoena and earlier, that Penn could not determine "[t]he identity of the PennNET user(s) who were assigned the IP Change History Database as listed on the attached Exhibit A" (April 12, 2004 letter attached hereto as Exhibit B).

III. ARGUMENT

A. Legal Standard

Federal Rule of Civil Procedure 45 provides that: "(3)(A) On timely motion, the court by which a subpoena was issued shall quash . . . the subpoena if it . . . "(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or . . . (iv) subjects a person to undue burden." The Court may quash or modify a subpoena in order to protect the subpoena recipient from annoyance, embarrassment or oppression. *Broome v. Simon*, 255 F. Supp. 434 (W.D. La. 1965). When the subject of a subpoena objects to its enforcement, as Penn has,[1] the party seeking production of documents must show good cause that the requested documents are necessary to establish his claim or defense, or that denial of production will unduly prejudice preparation of his case or cause him hardship or injustice. *United States v. Am. Optical Co.*, 39 F.R.D. 580 (N.D. Cal. 1966).

The power of the court to require production of documents by means of a subpoena duces tecum is restricted to requiring production of documents which are or probably are evidence. *United States v. Aluminum Co. of Am.*, 1 F.R.D. 62 (S.D.N.Y. 1939). The Court may quash or

[1] Penn has not waived its objections to the subpoena. Penn is not even a party to this case. The subpoena is overbroad on its face and exceeds the bounds of fair discovery. Furthermore, Penn has acted in good faith in responding to this and all of Mr. Parker's discovery requests. As Parker discusses in his motion, the parties conferred regarding this discovery on April 9, 2004, prior to the filing of this motion. *See Semtek Int'l v. Merkuriy Ltd.*, No. 3607, 1996 WL 238538 (N.D.N.Y. May 1, 1996).

modify a subpoena seeking overbroad discovery. *See Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44 (S.D.N.Y. 1996).

Rule 26(c) permits this Court to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: 1) that the disclosure or discovery not be had . . . 4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters." Protective orders are available to protect against abuse of the discovery process, *Caisson Corp. v. County West Bldg. Corp.*, 62 F.R.D. 331 (E.D. Pa. 1974), and may be issued for good cause, *Miles v. Boeing Co.*, 154 F.R.D. 112 (E.D. Pa. 1994).

B. Mr. Parker's Subpoena Is Harassing and Overbroad

Penn has repeatedly informed Mr. Parker that no information is available from which the identity of the senders of the emails in question could be determined. This is true even if Penn were ordered to supply the requested information. At the February 12, 2003 hearing on the first subpoena, Penn employees provided under oath the evidence establishing Penn's inability to identify the senders of the emails. Penn has documented that it does not have the information Mr. Parker seeks. Still, Mr. Parker persists in requesting, again and again, the same information from Penn – even in unrelated discovery proceedings. Rule 45 was designed to protect subpoena recipients, especially third-party subpoena recipients, from this is the sort of harassing discovery.

This third time, Mr. Parker is asking for more than simply the identity of the senders of the emails in question. Now he demands lists of the names and addresses of Penn graduates with particular academic majors or home states or fraternity memberships, in an apparent effort to hunt down the identity of "Wintermute" using personal information that "Wintermute" allegedly published on Internet sites in Australia and other places. *See* Plaintiff's First Amended

Complaint at 13-15. Even with the subpoenaed information, he will not be able to identify the sender of the emails in question.

Penn has a strong interest in keeping the names and addresses of its graduates out of the hands of persons such as Mr. Parker. The issuance of an order is appropriate here in light of that interest as well as the absence of any good cause. *See Butta-Brinkman v. FCA Int'l, Ltd.*, 164 F.R.D. 475 (N.D. Ill. 1995) (protective order issued to protect employer from having to disclose names of employees complaining of sexual harassment). If Penn turned over the lists of students that Mr. Parker demands, there is no telling how many Penn graduates Mr. Parker would contact, or what sort of methods he would use to determine whether a particular student has the Internet identity of "Wintermute." Whatever benefit there might be to giving Mr. Parker a list of possible "Wintermute" candidates is clearly outweighed by the burdens on Penn graduates who will want nothing to do with Mr. Parker and his quest to punish his online enemies. They, and Penn, are entitled to be able to stay out of his fracas.

VII. CONCLUSION

The Court should not enforce the subpoena but rather should quash it because the requests for names and addresses of Penn students is improper and overbroad, and the remaining request for information about the identity of senders of emails has already been answered repeatedly and is harassing. In addition, the Court should issue an order prohibiting

Mr. Parker from seeking further third-party discovery from Penn relating to the broad allegations of this complaint without leave of Court.

Respectfully submitted,

Date: April 22, 2004

John M. Myers (Pa. Id. No. 16642)
Jonathan H. Pyle (Pa. Id. No. 89887)
Montgomery, McCracken, Walker &
Rhoads, LLP
123 South Broad Street
Philadelphia, PA 19109
(215) 772-1500

Attorneys for Nonparty
University of Pennsylvania

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GORDON ROY PARKER	:	**CASE NO.: 02-cv-7215**
vs.	:	
JOHN DOE, a/ka "Wintermute" and and Does #2-100	:	

**RESPONSE OF THE UNVERSITY OF PENNSYLANIA
TO THE MOTION TO COMPEL**

This is a brief response to Mr. Parker's Motion to Compel. As set forth in my December 18, 2002 letters to the Court and Mr. Parker (attached as Exhibit "A"), the University has complied with the Subpoena by informing Parker and the Court that the University is not in possession of documents or information as to the identity of the senders of the e-mails attached to the Subpoena. Appended as Exhibit "B" are the Affidavits of Mr. Millar and Detective Blackmore, whom Parker asserts have such information. They do not.

There is no further response the University can give to the Subpoena.

Accordingly, the Motion to Compel should be denied.

Respectfully,

DATED: January 15, 2003.

By:____________________
John M. Myers
Attorney I.D. No. 16642

MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP
123 South Broad Street
Philadelphia, PA 19109
Telephone No.: (215) 772-7535
Facsimile No.: (215) 772-7620
Attorneys for THE UNIVERSITY OF PENNSYLVANIA

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
ATTORNEYS AT LAW

JOHN M. MYERS
ATTORNEY AT LAW
ADMITTED IN PENNSYLVANIA

DIRECT DIAL
215-772-7535

jmyers@mmwr.com

123 SOUTH BROAD STREET
PHILADELPHIA, PA 19109
215-772-1500
FAX 215-772-7620

LIBERTYVIEW
457 HADDONFIELD ROAD, SUITE 600
CHERRY HILL, NJ 08002
856-488-7700
FAX 856-488-7720

CHRISTIANA EXECUTIVE CAMPUS
131 CONTINENTAL DRIVE, SUITE 304
NEWARK, DE 19713
302-894-7000
FAX 302-733-7937

December 18, 2002

Hon. James McGirr Kelly
Rm. 8614
U.S. Courthouse
601 Market St.
Philadelphia, PA 19106

Re: Parker v. Doe, AKA Wintermute, 02-cv-7215
Motion to Enforce Subpoenas Duces Tecum on
Nonparty University of Pennsylvania -
Response to the Motion on Behalf of the University of Pennsylvania

Dear Judge Kelly,

This letter is the University's response to the above motion, filed by letter in the hopes of maintaining reasonable economy in the matter.

Attached is the letter sent this date to the pro se plaintiff. Simply put, the University, which is not a party to this matter, has nothing responsive to the subpoena.

If Mr. Parker does not withdraw his motion based upon this response, or if the Court so directs, the University will file more formal objection to the subpoena, and/or a more formal response to Mr. Parker's motion. By responding to Mr. Parker as we did, we did not intend to waive any of the University's objections or defenses to the subpoena.

Sincerely,

John M. Myers

cc: Gordon Roy Parker
Eric Tilles, Esq.

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
ATTORNEYS AT LAW

JOHN M. MYERS
ATTORNEY AT LAW
ADMITTED IN PENNSYLVANIA

DIRECT DIAL
215-772-7535

jmyers@mmwr.com

123 SOUTH BROAD STREET
PHILADELPHIA, PA 19109
215-772-1500
FAX 215-772-7620

LIBERTYVIEW
457 HADDONFIELD ROAD, SUITE 600
CHERRY HILL, NJ 08002
856-488-7700
FAX 856-488-7720

CHRISTIANA EXECUTIVE CAMPUS
131 CONTINENTAL DRIVE, SUITE 304
NEWARK, DE 19713
302-894-7000
FAX 302-733-7937

December 18, 2002

Gordon Roy Parker
4247 Locust St. #806
Philadelphia, PA 19104

Re: Parker v. Doe, aka Wintermute, 02-cv-7215
Subpoena Directed to Office of General Counsel, University of Pennsylvania

Dear Mr. Parker:

Without waiver of any and all objections to the subpoena, the University of Pennsylvania responds as follows:

> The University has no available information from which the identity of the senders of the emails attached to the subpoena could be determined.

Based upon this response, it is my expectation that you will promptly withdraw the Motion to Compel. Should you refuse, the University will assert every available defense and objection to the motion to compel which you have filed.

Sincerely,

John M. Myers,
Counsel for the University

cc: Eric Tilles

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER	:	**CASE NO.: 02-cv-7215**
vs.	:	
JOHN DOE, a/ka "Wintermute" and and Does #2-100	:	

STATEMENT
OF
DAVID MILLAR

I, David Millar, declare the following:

1. I am the Information Security Officer at the University of Pennsylvania.

2. In that connection, I was asked by University Counsel whether the University has computer information or documents from which the identity the sender of the e-mails attached to the subpoena directed to the University can be determined.

3. The University has no documents or computer records from which the identity of the senders of the e-mails attached to the subpoena could be determined.

Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct.

[signature] 1/6/03

David Millar (date)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER	:	CASE NO.: 02-cv-7215
vs.	:	
JOHN DOE, a/ka "Wintermute" and aud Does #2-100	:	

STATEMENT
OF
JAMES B. BLACKMORE

I, James D. Blackmore, declare the following:

1. I am a Detective in the University of Pennsylvania Department of Public Safety.

2. In that connection, I was involved in the processing of a Complaint by Gordon Roy Parker on September 11, 2000.

3. I was unable to determine the sender of the e-mail about which Mr. Parker complained.

4. Other than the report attached to Mr. Parker's subpoena, a copy of which I have seen, I have no information or paperwork, and am not aware of any held by the University, concerning this incident.

Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct.

James B. Blackmore 1-6-03
James B. Blackmore (date)